Editor's note: Reconsideration granted; decision vacated -- See Heirs of Madrona Wassillie On Reconsideration), 64 IBLA 167 (May 25, 1982)

HEIRS OF MADRONA WASSILLIE

IBLA 75-615 Decided December 23, 1975

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application, AA-6252.

Affirmed.

1. Alaska: Native Allotments

   The burden is upon an applicant for an Alaska Native allotment to provide clear and credible evidence of his or her entitlement to an allotment. Failure to do so will result in rejection of the application.

2. Alaska: Native Allotments

   When an applicant for an Alaska Native allotment dies without having complied with the law and regulations necessary to earn an allotment, no property right is created which could have passed to the heirs of the applicant upon her death.

APPEARANCES: Henry W. Cavallera, Esq., Alaska Legal Services Corporation, Dillingham, Alaska, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Madrona Wassillie's application for a Native allotment, filed pursuant to the Alaska Native Allotment Act of May 17, 1906, 43 U.S.C. § 270-1 through § 270-3 (1970), was rejected by the Alaska State Office, Bureau of Land Management (BLM), by decision dated March 20, 1975.

On September 24, 1973, BLM conducted a field examination of the subject land. An extensive aerial search by helicopter and a subsequent ground examination only revealed some snowmobile trails passing through the allotment and evidence of old tree cutting. No

other visible signs of use and occupancy were found. The field report concluded that the applicant failed to make actual use and occupancy of the subject land to the potential exclusion of others as required by 43 CFR 2651.0-5(a). 1/

The BLM decision of March 20, 1975, concluded that the application had to be rejected because the applicant failed to present clear and credible evidence of her entitlement to an allotment. An appeal was filed by the Bureau of Indian Affairs on behalf of the estate of Madrona Wassillie. The record does not disclose the date of death of the applicant, although the statement of reasons states that she died in May 1973.

On appeal the statement of reasons filed with the appeal, Farmer Kichok, IBLA 75-77B, was incorporated by reference. The arguments advanced in Kichok need not be set forth again herein. It is sufficient to say that such arguments are not persuasive in the present case.

In addition, four affidavits were filed with the appeal. The people were either neighbors or friends of Madrona Wassillie. They had all seen her use the land. They all stated that the applicant had begun using the land between 1933 and 1936. The applicant herself in her application claimed seasonal use only from 1960. Nothing in the record shows any improvements or other signs of possessory use.

It is argued that the witnesses' statements substantiate applicant's use and occupancy. Taking such statements in the light most favorable to applicant, they establish that the applicant made intermittent seasonal use of the lands in question for hunting, trapping and berrypicking. There is no indication that applicant used the land at least potentially to the exclusion of others as required by the regulations. In fact, the field report indicated that the snowmobile trails crossing the land appeared to be public use trails originating in the village of Igiugig.

[1], [2] The burden is on the applicant to provide clear and credible evidence of her entitlement to an allotment. Annie Blue, 18 IBLA 60 (1974). The evidence presented on appeal falls far short of such standard. Nothing establishes that the applicant used and

---

1/ 43 CFR 2561.0-5(a) reads:

"The term `substantially continuous use and occupancy' contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use."

occupied the land in question to the potential exclusion of others during her lifetime. Since the applicant failed to comply with the law and regulations, she did not earn a right to an allotment during her lifetime. Therefore, there was no property right which could have passed to the applicant's heirs upon her death. See Larry Dirks, Sr., 14 IBLA 401 (1974).

A hearing has also been requested. However, sample opportunity has been afforded for submission of evidence of use and occupancy and sufficient evidence has not been forthcoming. There has been no showing that the BLM decision was in error. There is no right to a hearing herein. The decision to hold hearings is within the discretion of the Secretary of the Interior. Pence v. Morton, 391 F. Supp. 1021 (D. Alas. 1975), appeal pending. No facts have been alleged which if proven would mandate a change in the decision below. Therefore, the request for a hearing is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge